

Appl. No. 10/625,815
Amdt. dated September 1, 2004
Reply to Office action of July 21, 2004

REMARKS

Claim Rejected Under 35 U.S.C. § 102

The Examiner has rejected claims 18 under 35 U.S.C. § 102(e) as being anticipated by Brenner. Applicant has amended claim 18 to more concisely define applicant's invention.

To anticipate a claim a reference must include each and every recited element in the claim. In this case, the combination claim first recites a ball dispenser. That is, a device for dispensing one or more balls from a pool of contained balls. Contrarily, Brenner discloses a hopper for receiving a plurality of balls. In other words, the hopper of Brenner is not a dispensing apparatus but a receiving apparatus for receiving a plurality of balls which land in pockets to generate a random poker hand.

Moreover, claim 18 recites that a ball selection is in response to one or more pre-established wagering game outcomes. That is, an underlying wagering table game is played and in response the ball dispenser is utilized to determine rewards based on specific winning wagers. Brenner teaches the use of a ball hopper for determining actual game outcomes. Specifically, Brenner utilizes a plurality of balls, the hopper and a series of card positions to create a random poker hand.

Accordingly, Brenner cannot anticipate claim 18 because Brenner does not disclose a ball dispenser or a ball dispenser used in response to wagering game outcomes.

Claims Rejected Under 35 U.S.C. § 103

In the Office action, claims 1-23 have been rejected under 35 U.S.C. 103(a) as unpatentable over Slinkman in view of Webb.

First, even assuming the combination offered by the Examiner is proper, it does not render the present claims obvious. Contrary to the Examiner, Webb does not disclose a ball dispenser but rather a ball container. The balls of Webb never leave the container thus it cannot be deemed a dispenser. The active balls of Webb are retained in a tray and selected in a non-random fashion.

Second, in order to combine one or more references to render a claim obvious, there must be some motivation or suggestion to combine the references. In other words, hindsight is impermissible. Such motivation or suggestion is clearly lacking to combine the references cited by the Examiner.

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The Examiner correctly summarizes the disclosures of Slinkman and Webb. However, the Examiner fails to identify the motivation or suggestion for combining the references. The fact that an electronic gaming device utilizes a ball container does not translate into a ball dispenser being used at a table game. As discussed in more detail below, electronic gaming devices and table games have always been differentiated by their purpose within the casino.

In general, Slinkman teaches a side wager for the table game of Blackjack. Slinkman also discloses that the table game may be facilitated by an electronic gaming device. Certainly, it is well known to utilize an electronic gaming device to facilitate a wagering table game in an electronic form. Regardless, Slinkman fails to mention or suggest the use of any type of device to determine the reward associated with the HEDGE BET. Moreover, a winning HEDGE BET is paid a pre-determined amount (see, column 5, lines 17-19). Thus, Slinkman teaches away from the use of any device, including a ball dispenser, for randomly determining a reward based on an amount of the HEDGE BET.

In general, Webb teaches an electronic gaming machine (e.g., slot machine) having a ball container affixed thereto. The ball container is not a ball dispenser. In fact, the balls within the container never leave the container. A thorough reading of Webb fails to disclose any mention or suggestion of using the ball container with a table game. Indeed, Webb teaches away from using the ball container in any manner other than with an electronic gaming device.

For example, column 4, lines 13-29 of Webb details numerous embodiments of the invention. Each embodiment of the Webb invention utilizes an electronic gaming device such as slot machine, poker machine, blackjack machine or keno machine. Thus, upon a triggering primary game event the bonus game is automatically and electronically activated (see, column 7, lines 1-3). There is no mention or suggestion of utilizing the ball container for a table game in response to a player placing a second wager and achieving a pre-established outcome.

One skilled in the art of developing electronic gaming machines would not utilize its features for a table game. In fact, the manufacturing of table games is separate and distinct from the manufacturing of electronic gaming machines. Indeed, table game manufacturers comprise the simple fabrication of table game layouts or felts. As such, heretofore, table games have not utilized a ball dispenser to determine game awards.

Although the Examiner cites Webb, numerous prior patents disclose electronic gaming machines incorporating similar ball containers. For example, U.S. Patent Nos.

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4,871,171 to Rivero, 5,088,737 to Frank, et al, and 6,338,678 to Seelig, et al, each disclose the use of ball containers in communication with electronic gaming machines (e.g., slot machines). Even though it has been known that electronic gaming machines may incorporate ball containers since at least 1987 (i.e., priority date of Rivero), no reference discloses the use of the same with a table game. Certainly, if the Examiner's obviousness position was correct, the invention claimed in the present application would have been disclosed much earlier in time, especially given the current propensity for new developments in the gaming industry. Again, applicant contends that the actual reason for the lack of a prior disclosure is that those skilled in the art of electronic gaming machines are not necessarily skilled in the art of table games. Those skilled in the art of table games focus on game rules while those skilled in the art of electronic gaming machines focus on much more technical aspects of slot machines and related machines. Heretofore, table games have incorporated very little in the way of technology. Accordingly, the two disciplines do not necessarily overlap.

By way of an analogy, keno ball dispensers have been around for decades and their implementation onto electronic gaming machines has been, as set forth above, the subject of numerous gaming patents. Would that not have been obvious as well? Placing a ball dispenser in proximity to a gaming table is simply not obvious based on the references the Examiner has cited.

Therefore, it is respectfully submitted that the application is now in condition for allowance and, accordingly, reconsideration and allowance are respectfully requested. Should any questions remain regarding the allowability of the application, the Examiner is invited to contact the undersigned at the telephone number indicated below.

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment of fees which may be required by this paper to Deposit Account No. 502466 including any fee for extension of time, or the fee for additional claims which may be required. Please show our docket number with any Deposit Account transaction. **A copy of this letter is enclosed.**

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Respectfully submitted,

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